



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

**June 22, 2016**

**IN RESPONSE, PLEASE REFER TO: 03161108**

Dr. Stacey Sidle  
Acting Superintendent  
Northeastern School District  
41 Harding Street  
Manchester, PA 17345

Dear Dr. Sidle:

This is to advise you that we have completed our investigation and reached a determination in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against the Northeastern School District (the District). The Complainant, XXXXXX, alleged that the District:

1. Discriminated against XXXXXX (the Student) on the basis of disability by failing to respond promptly and equitably to his reports of disability-based harassment of the Student during the 2015-2016 school year; and
2. Retaliated against the Student for reporting disability-based harassment by not XXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. Section 504 also prohibits retaliation. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities. Title II also prohibits retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In our investigation, OCR reviewed documentation submitted by the Complainant and the District, and interviewed the Complainant and the Complainant's wife (the Student's mother) and District personnel. OCR has determined that there is insufficient evidence to support the Complainant's allegation that the District discriminated and retaliated against the Student. OCR has determined, however, that the District's grievance procedures failed to comply with the requirements of Section 504 and Title II. The District signed an Agreement on June 6, 2016, to address this compliance concern.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

## **LEGAL STANDARDS**

### **Disability Harassment**

The regulation implementing Section 504 prohibits a recipient of Federal financial assistance from discriminating on the basis of disability. The Section 504 regulation, at 34 C.F.R. § 104.4(a), states that no qualified individual shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II.

Disability harassment that is severe, pervasive or persistent can result in the denial or limitation of a student's ability to participate in or receive benefits, services or opportunities from the school's program. If a recipient receives information indicating that a student may have been harassed on the basis of disability, the recipient is responsible for investigating the allegations and, if a hostile environment is found, to take immediate effective action to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

To establish a violation under the hostile environment approach, OCR must determine whether the conduct constitutes a hostile environment from the totality of the circumstances, including a consideration of whether the disability harassment is severe, pervasive, or persistent. In making this determination, OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment. In addition, as with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim. For example, the age and maturity of the students involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual or isolated incidents to constitute a hostile environment on the basis of disability. In addition, where a recipient has notice of the conduct, we determine whether it took prompt and effective action to eliminate the hostile environment and prevent its recurrence.

### **Retaliation**

When investigating a retaliation claim, OCR must determine whether: (1) the individual engaged in a protected activity; (2) the recipient had notice of the individual's protected activity; (3) the individual was subjected to an adverse action contemporaneous with or subsequent to the protected activity; and (4) there was a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. While OCR would need to address all of the elements in order to find a violation, OCR need not address all of these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established. If all of these elements establish a prima facie case, OCR then considers whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action, and whether the reason asserted is a pretext for retaliation.

In order for an activity to be considered to be protected, the individual must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in an investigation conducted under the laws that OCR enforces. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice

requirement. In determining whether an action taken by the recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. Generally, the more time in between the protected activity and the adverse action, the weaker the presumption of a causal connection. Additional evidence that would demonstrate a causal connection includes: a change in treatment of the individual before and after engaging in the protected activity; treatment of the individual that is different from treatment of other similarly situated individuals; and deviation from established practice or procedure.

### **Section 504 Grievance Procedures**

The Section 504 regulation, at 34 C.F.R. § 104.8, requires recipients to notify participants, beneficiaries, applicants, and others that the recipient does not discriminate on the basis of disability in violation of Section 504. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, it shall include in those materials or publications a statement of the nondiscrimination policy.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires recipients that employ fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by Section 504, including disability harassment. OCR has identified a number of elements in evaluating whether a recipient's grievance procedures provide for the prompt and equitable resolution of complaints of discrimination and harassment. These include:

- Notice of the procedure, including where complaints may be filed;
- Application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint; and
- An assurance that the recipient will take steps to prevent recurrence of any discrimination and to correct its discriminatory effects on the complainant and others, if appropriate.

### **FACTUAL FINDINGS**

The Student attended the XXXXXX (the School) during the 2015-16 school year. She has a disability XXXXXX and was receiving services from the District under a Section 504 Plan.

XXXXXX

xx- paragraphs redacted-xx

XXXXXX

xx- paragraphs redacted-xx

XXXXXX

xx- paragraphs redacted-xx

## **LEGAL ANALYSIS**

**XXXXXX**

. xx- paragraphs redacted-xx

**XXXXXX**

xx- paragraphs redacted-xx

### **Section 504 Grievance Procedures**

As part of the investigation, OCR reviewed the District's Section 504 grievance procedures, and determined that they do not comply with the requirements of Section 504/Title II. Specifically, neither policy provided by the District states that it applies to complaints alleging discrimination carried out by students, employees or third parties, neither policy states that both parties will have the opportunity to present witnesses and other evidence, and neither policy states that the District will take steps to correct the discriminatory effects on the complainant and others, if appropriate.

On June 6, 2016, the District signed an Agreement to address these compliance concerns. When fully implemented, the Agreement will address all of OCR's compliance concerns. Consistent with our procedures, OCR will monitor the implementation of the agreement until the District is in compliance with the regulation implementing Section 504, at 34 C.F.R. § 104.7(b), and the regulation implementing Title II, at 28 C.F.R. § 35.107(b), which were at issue in the case.

This concludes OCR's investigation of this complaint, and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR is committed to a high-quality resolution of every case. If you have questions or concerns regarding OCR's finding, you may contact Mr. Robert Ford at 215-656-8537 or by email at Robert Ford @ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth Gellman-Beer". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Beth Gellman-Beer  
Team Leader

Enclosure

cc: Beth Ann Radanovic